

**MINUTES  
BOARD OF ADJUSTMENT  
CITY HALL COUNCIL CHAMBERS  
116 W. NEEDLES AVE.  
BIXBY, OK 74008  
April 01, 2013 6:00 PM**

**STAFF PRESENT:**

Erik Enyart, AICP, City Planner  
Patrick Boulden, Esq., City Attorney

**ATTENDING:**

See attached Sign-in Sheet

**CALL TO ORDER**

Meeting called to order by Chair Jeff Wilson at 6:00 PM.

**ROLL CALL**

Members Present: Jeff Wilson, Dave Hill, Murray King, and Darrell Mullins.

Members Absent: Larry Whiteley.

**MINUTES**

1. Approval of Minutes for March 04, 2013

Chair Jeff Wilson made a MOTION to APPROVE the Minutes of March 04, 2013 as presented by Staff. Dave Hill SECONDED the Motion. Roll was called:

**ROLL CALL:**

AYE: King, Wilson, Mullins, & Hill

NAY: None.

ABSTAIN: None.

MOTION CARRIED: 4:0:0

**OLD BUSINESS**

Chair Jeff Wilson asked if there was any Old Business to consider. Erik Enyart stated that he had none. No action taken.

**NEW BUSINESS**

2. **BBOA-572 – Spencer Thompson.** Discussion and possible action to approve a Variance from the accessory building maximum floor area per Zoning Code Section 11-8-8.B.5 to

allow a new 30' X 50' (1,500) square foot accessory building in the rear yard for property in the RS-1 Residential Single-Family District.

Property located: The W/2 E/2 NE/4 NE/4 NW/4 NE/4 of Section 11, T17N, R13E; 7702 E. 131<sup>st</sup> St. S.

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Chair Jeff Wilson introduced the item and called on Erik Enyart for the Staff Report and recommendation. Mr. Enyart summarized the Staff Report as follows:

**To:** Bixby Board of Adjustment  
**From:** Erik Enyart, AICP, City Planner  
**Date:** Wednesday, March 27, 2013  
**RE:** Report and Recommendations for:  
BBOA-572 – Spencer Thompson

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LOCATION: – The W/2 E/2 NE/4 NE/4 NW/4 NE/4 of Section 11, T17N, R13E  
– 7702 E. 131<sup>st</sup> St. S.

LOT SIZE: 0.625 acres, more or less

ZONING: RS-1 Residential Single-Family District

REQUEST: Variance from the accessory building maximum floor area per Zoning Code Section 11-8-8.B.5 to allow a new 30' X 50' (1,500) square foot accessory building in the rear yard for property in the RS-1 Residential Single-Family District

SURROUNDING ZONING AND LAND USE: RS-1, RS-4, AG, & IL; Rural residential along 131<sup>st</sup> St. S. in unplatted tracts and in Poe Acreage to the north and Clyde Miller Acreage to the northeast, with RS-4 and urban density single family residential to the southeast in Abbie Raelyn Estates, and agricultural and vacant land to the south/southwest zoned RS-1, AG, and IL

COMPREHENSIVE PLAN: Low Intensity + Residential Area

PREVIOUS/RELATED CASES: (not a complete list)

BL-34 – Stella Harness – Request for Lot-Split approval separating subject property from its former eastern half addressed 7706 E. 131<sup>st</sup> St. S. – PC Recommended Approval 09/26/1977 subject to Board of Adjustment approval.

BBOA-41 – Stella Harness – Request for Variance from the Lot-Width requirement in the RS-1 district to allow for Lot-Split (cf. BL-34) – BOA Approved 01/10/1978.

RELEVANT AREA CASE HISTORY: (not a complete list)

BBOA-243 – John Little – Request for Variance of 600 square foot maximum floor area for detached accessory building in the RS-1 district to permit an additional 1,000 square feet for formerly 2.5-acre tract abutting to the west addressed 7516, 7710, & 7704 E. 131<sup>st</sup> St. S. – BOA Approved 08/05/1991 per case notes.

BBOA-366 – John Neerman – Request for Variance of 750 square foot maximum floor area for detached accessory building in the RMH district to permit a 36' X 45' (1,620 square foot) accessory building for property located to the northwest of subject property, Lot 3, Block 4, La Casa Movil Estates, addressed 12921 S. 73<sup>rd</sup> E. Ave. – BOA Approved 04/02/2001 on the Condition that no commercial use be permitted.

BBOA-398 – William & Sherri Nichols – Request for Variance of 750 square foot maximum floor area for detached accessory building in the RS-1 district to permit a 35.3' X 50.3' (1,775.59 square foot) accessory building for property located 1 block to the northw of subject property, Lot 6, Block 2, Poe Acreage, addressed 7712 E. 130<sup>th</sup> St. S. – BOA Approved 02/03/2003.

BACKGROUND INFORMATION:

ANALYSIS:

Subject Property Conditions. The subject property is an unplatted tract of approximately 0.625 acres, addressed 8703 E. 124<sup>th</sup> St. S., and Zoned RS-1. Per the provided Mortgage Inspection Report survey drawing dated 9/15/11, it contains an existing house and two (2) accessory buildings of approximately

625 square feet and 80 square feet (705 square feet in aggregate). It is not clear, however, from current aerial photography whether the smaller storage building remains on the property.

According to a 10/2001 photograph in the Tulsa County Assessor's records for this property, behind/to the south of the second, smaller accessory building used to be a third, red accessory building, which appeared to be of a size somewhat between the smaller and larger accessory buildings.

Tests and Standard for Granting Variance. Oklahoma State Statutes Title 11 Section 44.107 and Bixby Zoning Code Section 11-4-8.A and .C together provide the following generalized tests and standards for the granting of Variance:

- Unnecessary Hardship.
- Peculiarity, Extraordinary, or Exceptional Conditions or Circumstances.
- Finding of No Substantial Detriment or Impairment.
- Variance would be Minimum Necessary.

Nature of Variance. The Applicant is requesting a Variance from the accessory building maximum floor area per Zoning Code Section 11-8-8.B.5 to allow a new 30' X 50' (1,500 square foot) accessory storage building for property in the RS-1 Residential Single Family District. As noted above, the property presently contains two (2) accessory buildings of approximately 625 square feet and 80 square feet (705 square feet in aggregate). Thus, the third building would bring the aggregate to approximately 2,205 square feet. It is not clear, however, from current aerial photography whether the smaller storage building remains on the property.

Zoning Code Section 11-8-8.B.5 provides:

*"5. In the RE and RS districts, detached accessory buildings may be located in a rear yard, provided the accessory building(s) in the aggregate do not cover more than twenty percent (20%) of the area of the rear yard or exceed eight hundred (800) square feet of floor area, whichever is less.*

*No accessory building shall exceed the height of the primary dwelling on the lot.*

*In the RE and RS districts, lots containing at least one acre of lot area shall be permitted to exceed the eight hundred (800) square foot floor area limitation by 11.6 percent. Further, lots containing 1.25 acres or more of lot area shall be permitted to exceed eight hundred (800) square feet by an additional 11.6 percent for each one-fourth (<sup>1</sup>/<sub>4</sub>) of an acre over one acre, provided that in no case shall accessory building(s) in the aggregate exceed the square footage of the first floor of the primary dwelling or two thousand four hundred (2,400) square feet, whichever is less, or cover more than twenty percent (20%) of the area of the rear yard. (Ord. 2031, 12-21-2009)"*

As the subject property is in the RS-1 residential zoning district and contains approximately 0.625 acres, the maximum allowable detached accessory building size is 800 square feet.

The "sliding scale" was introduced as a measure of flexibility, along with an increase in the basic maximum square footage from 750 square feet to 800 square feet, by Ordinance # 2031, approved December 21, 2009. It was designed to allow people to have larger accessory buildings, if they had enough land so that the accessory building did not dominate the parcel aesthetically and so detract from the neighborhood. The "sliding scale" was calculated in order to start at 800 square feet and increase regularly for each 1/4 acre increment to the maximum of 2,400 square feet, which requires a lot containing slightly more than 3.25 acres.

This is the fifth application for Variance which has been received since the added flexibility was created, and it is requesting a Variance to exceed even the new flexibility. The first was BBOA-550 – Mitch & Gail Pilgrim, which the Board approved 12/05/2011 for that property located in Bixhoma Lake Estates. The second was BBOA-558 – John Ryel, which the Board approved 05/07/2012 for that property located in the Houser Addition. On August 06, 2012, the Board of Adjustment denied an application to build a 5,000 square foot addition to an existing 900 square foot accessory building for an unplatted 1-acre tract at 14426 S. Harvard Ave. (BBOA-565 – Robert Campbell III & Karen M. Campbell). Most recently, on October 01, 2012, the Board approved BBOA-568 – Roger O. Nunley, Jr.,

allowing allow a new 960 square foot addition to an existing 2,000 square foot accessory structure for property in the RS-1 District at 8703 E. 124<sup>th</sup> St. S. in Southern Memorial Acres No. 2.

Unnecessary Hardship. The Applicant claims that an Unnecessary Hardship would be caused by the literal enforcement of the Zoning Code because “Needed storage for personal vehicles (storage building).” Elsewhere on the application form, the Applicant has further explained the need thus, “Storage building (30’ X 50’) to house all vehicles that [are] currently sitting outside. Vehicles needing to be housed ..boat, (2) 4x4 off road jeeps and lawn mowers (rider and push) and etc. Building is in accordance with similar building already existing. Please see attached pictures.”

The argument appears to be that the failure to be granted Variance would deprive the owner of the right to exceed the aggregate maximum floor area for an accessory building, and as a result, lack of proper shelter for (some amount of) relatively expensive personal property. Staff does not dispute that this claim is true, and may amount to an Unnecessary Hardship.

Peculiar, Extraordinary, or Exceptional Conditions or Circumstances. The Applicant responded to the question asking how the subject property and its Condition or Situation is Peculiar, Extraordinary, and/or Exceptional by stating, “This is in accordance with other property owners existing building[s].”

The implied claim appears to point to other properties in the area which have accessory building(s) which, as individual buildings or in aggregate with others, exceed the maximum aggregate floor area allowance on their respective lots.

Staff believes that the following facts may be considered additional arguments in support of this test and standard:

1. The subject property had three (3) storage buildings as of 10/2001, and may now only have one (1) or two (2).
2. The subject property is relatively large, and is less than 4/10 of an acre short of qualifying for a somewhat larger (892.8 square feet) accessory building aggregate maximum.
3. The subject property is exceptionally deep in relation to its lot width, and the proposed replacement accessory building would be located within the deep back yard. Subdivision Regulations Section 12-3-4.F prohibits new lots from exceeding a depth to width ratio of 2:1. At a lot depth to width ratio of 4 to 1, the subject property is relatively rare and somewhat unique.
4. The proposed replacement accessory building would be located in an area which is adjacent to the rear yards of two (2) other properties which also have deep rear yards.

Finding of No Substantial Detriment or Impairment. The Applicant claims that the requested Variance would Not Cause Substantial Detriment to the Public Good or Impair the Purposes, Spirit and Intent of the Zoning Code or the Comprehensive Plan because “Existing properties surrounding mine [have] similar buildings [as] I wish to build and [they] did not affect mine or has caused any adverse property de-valuation or any safety hazards.”

The Applicant’s underlying argument appears to be that the aesthetic effect would not be as pronounced in this case due to the presence of other properties in the area with evidently excessively large accessory buildings.

The Applicant has provided a photograph of an accessory building on the property “next door,” which would appear to be the one to the west as the one to the east does not appear to have an accessory building. Per GIS and aerial data, the property to the west appears to have three (3) or four (4) accessory buildings, perhaps at or approaching 2,500 square feet in aggregate. It was approved for Variance for “an additional 1,000 square feet” per BBOA-243 – John Little on 08/05/1991.

In addition to the one mentioned just above, the Applicant provided three (3) other photographs of what appear to be excessively large accessory buildings on properties in the area. Also, in addition to the Variance case mentioned just above, the area case history documents two (2) other Variances for excessively large accessory buildings in the area. Beyond these, there appear to be several other detached accessory buildings in Poe Acreage, Clyde Miller Acreage, and unplatted areas along 131<sup>st</sup> St. S. which, by a cursory investigation, appear to exceed the current 800, and former 600 and 750 square foot maximum standards for the same. Thus, it would appear that some of the apparently excessively large accessory buildings in the area were constructed absent Variances.

Although the presence of other area properties with oversized accessory buildings would appear to support the Applicant’s cause, nonconformities are generally not recognized as adequate for justification of the creation of new nonconformities by Variance.

*Of the several fundamental purposes for imposing maximum accessory building size and rear yard placement restrictions, Staff believes the primary reason is for the sake of consistency of design, proportionality, and mode of placement of structures (aesthetics). Recognizing that the subject property previously had one (1) or two (2) other accessory buildings of somewhat less aggregate size for some time, evidently without protest from surrounding property owners, and that the replacement building will be located in the rear yard of a large, deep lot, in an area adjoining the rear yards of other deep-yard lots, Staff believes that the primary purpose is not as critical a concern in this instance. Building on the facts presented in this paragraph, it would appear that the proposed replacement accessory building would not “dominate the parcel aesthetically.” See the arguments listed under the Peculiar, Extraordinary, or Exceptional Conditions or Circumstances test and standard for details on how those arguments can apply to this test and standard.*

*For all the reasons set forth above, Staff believes that that approval of the requested Variance would Not Cause Substantial Detriment to the Public Good or Impair the Purposes, Spirit and Intent of the Zoning Code or the Comprehensive Plan.*

*Finding of Minimum Necessary. The Applicant claims that the requested Variance would be the Minimum Necessary to Alleviate the Unnecessary Hardship because “Amount required is what is needed to house lawn mowers, off road vehicles and etc.”*

*The provided argument is self-explanatory.*

*Recognizing the intent behind the “sliding scale” flexibility provision, Staff believes it should be somewhat more difficult to justify this test and standard. If the Board is amenable to this application, it must find that the proposed aggregate 2,205 square feet of accessory buildings, 2.8 times the 800 square foot maximum, is the Minimum Necessary to Alleviate the Unnecessary Hardship.*

*Staff Recommendation. Except as noted otherwise hereinabove, Staff believes that the arguments provided by the Applicant and Staff appear to substantially meet some of the tests and standards of the Zoning Code and State Statutes. To the extent the arguments are found lacking, the Board may wish to consider other arguments that the Applicant and Board may discover during public hearing and consideration of this case at the meeting.*

Chair Jeff Wilson asked if the Applicant was present and wished to speak on the item. Applicant Spencer Thompson of 7702 E. 131<sup>st</sup> St. S. stated that it would be a wood frame structure for storage. Mr. Thompsons stated that he would store classic cars and other things he had that required storage.

A man who did not give his name stated that [Spencer Thompson] had cleaned up and improved the property. Chair Jeff Wilson asked the gentleman to introduce himself. Joe Thompson of 7702 E. 131<sup>st</sup> St. S. stated that he was Spencer’s father. Mr. Thompson stated that his son had purchased the property about a year and a half ago, and took an estimated \$78,000 property and improved it. Mr. Thompson stated that a reappraisal lately valued the property at \$144,000. Mr. Thompson stated that his son had cleaned up the property.

Chair Jeff Wilson asked how many [storage] buildings were on the property now, and Joe Thompson and Spencer Thompson stated that there was only one (1) now.

Spencer Thompson stated that the existing storage building was 30’ X 30’, and was in poor condition. Mr. Thompson stated that his neighbor to the west had three (3) storage buildings, and the owner said she would send a letter supporting his application. Erik Enyart stated that that neighbor’s letter was on page 24 of the agenda packet.

Erik Enyart stated that, in this case, the Variance would be “somewhat less” than the Variance might otherwise be, as there were, according to the Tulsa County Assessor’s records, three (3)

storage buildings at one point, and now there was only one (1). Mr. Enyart stated that it could be seen as “reclaiming square footage that used to be on the lot.”

Murray King asked how much of a Variance was being requested. Erik Enyart consulted the Staff Report and stated that the total now proposed was 2,205 square feet per his calculations, which was 2.8 times the 800 square foot maximum permitted, and so a Variance of 2.8 times was being requested.

Chair Jeff Wilson stated that the lot was uniquely configured, as it was a long/deep lot, with surrounding properties that made it somewhat unique.

Darrell Mullins asked if the proposed building would be similar to the photos the Applicant had provided. Spencer Thompson responded that it would look “like this one next door,” and pointed to the photograph on page 20 of the agenda packet.

Chair Jeff Wilson asked to entertain a Motion. Murray King made a MOTION to APPROVE BBOA-572. Darrell Mullins SECONDED the Motion. Roll was called:

ROLL CALL:

AYE: King, Wilson, Mullins, & Hill  
NAY: None.  
ABSTAIN: None.  
MOTION CARRIED: 4:0:0

Erik Enyart explained the Decision of Record process to Spencer Thompson.

3. **BBOA-573 – Bixby Public Schools.** Discussion and possible action to approve a Special Exception per Zoning Code Section 11-7A-2 Table 1 to allow a Use Unit 5 Community Center and/or a Use Unit 5 public school facility in an AG Agricultural District.  
Property located: Part of the W/2 W/2 NE/4 of Section 24, T17N, R13E; 23 N. Riverview Rd.

Chair Jeff Wilson introduced the item and called on Erik Enyart for the Staff Report and recommendation. Mr. Enyart summarized the Staff Report as follows:

*To: Bixby Board of Adjustment  
From: Erik Enyart, AICP, City Planner  
Date: Wednesday, March 27, 2013  
RE: Report and Recommendations for:  
BBOA-573 – Bixby Public Schools*

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LOCATION: – Part of the W/2 W/2 NE/4 of Section 24, T17N, R13E  
– 23 N. Riverview Rd.  
LOT SIZE: 4 acres, more or less  
ZONING: AG Agricultural District  
REQUEST: Special Exception per Zoning Code Section 11-7A-2 Table 1 to allow a Use Unit 5 Community Center and/or a Use Unit 5 public school facility in an AG Agricultural District

**SURROUNDING ZONING AND LAND USE:**

**North:** AG; Agricultural.

**South:** AG; The Bixby Public Schools' landholding and school facilities located between Riverview Rd. and Mingo Rd.

**East:** AG; The Bixby Public Schools' landholding and school facilities located between Riverview Rd. and Mingo Rd.

**West:** RS-3; Residential and vacant lots in the Midland Addition and the [Original Town of] Bixby.

**COMPREHENSIVE PLAN:** (1) Low Intensity/Development Sensitive, (2) Vacant, Agricultural, Rural Residences, and Open Land, and (3) Community Trails.

**PREVIOUS/RELATED CASES:** None found.

**RELEVANT AREA CASE HISTORY:** (not a complete list)

**BZ-172 – James H. Powell** – request for rezoning approximately 20 acres of the school property abutting to the south at approximately 15600 S. Mingo Rd.; appears to be the bus barn area and the north side of the running track) from AG to RMH for a mobile home park (evidently never built) – City Council Approved 06/10/1986 (Ord. # 539)

**BBOA-198 – Bixby Public Schools** – request for Variance from the 26' height restriction to allow up to 30' in height, to permit an addition to an existing school for the formerly 8-acre school property tract to the south at 501/515 S. Riverview Rd. – BOA Approved 01/11/1988 per case notes.

**BBOA-234 – Bixby Public Schools** – request for Special Exception to allow a bus barn in an RMH district on approximately 20 acres of the school property abutting to the south at approximately 15600 S. Mingo Rd. – Approved December 1990 per case notes.

**BBOA-282 – Bixby Public Schools** – request for Special Exception to allow a Use Unit 5 school on part of the SW/4 SE/4 of the section (appears to include all of the school-owned tracts in the SW/4 SE/4 lying south of Bixby Creek) to the south of subject property – BOA Approved 08/01/1994.

**BBOA-299 – Carolyn Wagnon** – request for (1) a Special Exception to permit Use Unit 15 in a CS district, and (2) a Variance of certain bulk and area requirements in the AG district to permit a Lot-Split for property located to the south of subject property at 711 S. Riverview Rd. – BOA Approved 06/05/1995.

**BL-192 – Wagnon Construction** – request for Lot-Split for an approximately 0.8-acre tract to the south of subject property located just south of 711 S. Riverview Rd. – PC Approved in 06/19/1995.

**BZ-213 – Carolyn Wagnon** – request for rezoning from AG to CS for an approximately 0.8-acre tract to the south of subject property located just south of 711 S. Riverview Rd. – City Council Approved 07/24/1995 (Ord. # 720).

**BZ-224 – Carolyn Wagnon** – request to rezone about 1 acre from AG to CG at about 707 S. Riverview Rd. – Withdrawn in 1996.

**BBOA-321 – Carolyn Wagnon** – request for Special Exception to allow Use Unit 23 in the CS district at about 707 S. Riverview Rd. – Withdrawn in 1996.

**BBOA-338 – James H. Powell** – request for Variance to allow a Use Unit 9 mobile home on a former approximately 1.15-acre tract of the school property abutting to the south at the approximately 15700-block of S. Mingo Rd. – Denied 08/03/1998.

**BBOA-339 – Bixby Public Schools** – request for Special Exception to allow the expansion of the existing Use Unit 5 Bixby Central Elementary school building in the RS-3 district for all of Blocks 9 and 16, [Original Town of] Bixby, located two (2) blocks to the southwest of subject property at 201 S. Main St. – BOA Approved 08/03/1998.

**BBOA-340 – Bixby Public Schools** – request for Special Exception for a Use Unit 5 school on approximately the west half of the Bixby Middle School property to the south of subject property at 9401 E. 161<sup>st</sup> St. S. – BOA Approved 08/03/1998.

**BZ-245 – James H. Powell** – Request for rezoning of an approximately 1.15-acre tract of the school property abutting to the south at the approximately 15700-block of S. Mingo Rd. from AG to RMH for a mobile home site – Approved in November, 1998 (Ord. # 783).

**Plat Waiver for Bixby Public Schools** – Request for Waiver of the platting requirement per Zoning Code Section 11-8-13 for 32 acres of the school property abutting to the south – Approved by City Council 03/08/2010 after accepting right-of-way and U/E dedications at the same meeting.

BBOA-519 – JR Donelson for Bixby Public Schools – request for Special Exception per Zoning Code Section 11-7A-2 Table 1 to allow a Use Unit 5 school facility in an AG Agricultural District on 32 acres of the school property abutting to the south – BOA Approved 04/05/2010.

BLPAC-6 – JR Donelson, Inc. for Bixby Public Schools – request for approval of a Landscaping Plan Alternative Compliance plan for 32 acres of the school property abutting to the south per Zoning Code Section 11-12-4.D for a Vocational-Agriculture building for Bixby Public Schools – PC Conditionally Approved 04/19/2010.

BZ-348 – JR Donelson, Inc. for Bixby Public Schools – request for rezoning part of a former 32-acre school property tract to the south from RMH to AG for school land use and development purposes – PC recommended Approval 04/19/2010 and City Council Approved 05/10/2010 (Ord. # 2037).

BBOA-521 – JR Donelson for Bixby Public Schools – request for Special Exception per Zoning Code Section 11-7A-2 Table 1 to allow a Use Unit 5 school facility in an AG Agricultural District on the former 72-acre school property tract abutting to the south – BOA Approved 06/07/2010.

BLPAC-8 – Alaback Design Associates, Inc. for Bixby Public Schools – request for approval of a Landscaping Plan Alternative Compliance plan for a former 40-acre tract of the school property abutting to the south per Zoning Code Section 11-12-4.D for a new middle school building for Bixby Public Schools – PC Approved 09/19/2011.

#### **BACKGROUND INFORMATION:**

In October of 2012, Staff communicated with Bixby Public Schools' (BPS) Facilities Director Marty Foutch on the BPS acquisition of the subject property from the Bixby First United Methodist Church. BPS acquired the property by deed recorded November 26, 2012. Per communication with Mr. Foutch, BPS desires to lease or otherwise grant use of the property to the Bixby Community Outreach Center (BCOC; [www.bixbyoc.org](http://www.bixbyoc.org)), which accepts donations of money, food, clothing, and other necessities and, in turn, provides them to those members of the Public in need of such assistance. This would be considered a Use Unit 5 "Community Center," which is allowed by Special Exception in the AG district.

The BCOC occupancy may be relatively temporary, and the School District may desire to use the subject property as an actual school facility at some point in the future. Therefore, as advised by Staff, BPS made application for Special Exception to allow the following Use Unit 5 uses: (1) Use Unit 5 Community Center offering financial and other methods of assistance to the Public, and (2) Use Unit 5 school facility use.

#### **ANALYSIS:**

Property Conditions. The subject property contains approximately 4 acres with a split-level house toward its centroid. It was sold from the Bixby First United Methodist Church to the School District in November of 2012.

The subject property is relatively flat and appears to drain to the southeast along a 100-year Floodplain drainageway cutting diagonally through the property from northwest to southeast.

Comprehensive Plan. The Comprehensive Plan designates the subject property as (1) Low Intensity/Development Sensitive, (2) Vacant, Agricultural, Rural Residences, and Open Land, and (3) Community Trails.

The proposed Use Unit 5 community center and/or school uses should be considered not inconsistent with the Comprehensive Plan.

Surrounding Zoning and Land Use Compatibility. Surrounding zoning patterns are primarily AG and RS-3.

On the west side of Riverview Rd. are residential homes and vacant lots zoned RS-3 in Midland Addition and the [Original Town off] Bixby. To the south there is the balance of the school's landholding located between Riverview Rd. and Mingo Rd., all zoned AG.

The land to the north is agricultural and zoned AG.

Several applications have previously been approved for Use Unit 5 school use for parts of the BPS's landholding and campuses abutting to the south. This application would be consistent with those approvals and the actual Use Unit 5 use.

For the most part, therefore, the proposed Use Unit 5 community center and/or school uses would be compatible with and complimentary to existing and future surrounding land uses and zoning patterns.

Scale and Intensity of Use. Community centers and schools tend to be fairly intensive land uses when developed, in terms of traffic, building scale, use activity, and infrastructure demands, and in that regard they are comparable to commercial and office developments. Recognizing that the Use Unit 5



*community center and/or school facilities may be permitted in an AG district by Special Exception, rather than rezoning which would otherwise be required, the platting requirement of Zoning Code Section 11-8-13 is effectively circumvented. However, in keeping with other school facilities in this area, a requirement for plat or Plat Waiver does not appear necessary, as the planned 60'-wide right-of-way (consistent with a Residential Collector Street) for the widened Riverview Rd. has already been secured, and utilities are already in place or may be extended through existing right-of-way and/or utility easements.*

*Staff Recommendation. Based on the Comprehensive Plan and surrounding zoning and land use patterns, Staff believes that the proposed Use Unit 5 community center and/or school use would be in harmony with the spirit and intent of the Zoning Code and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.*

*Staff recommends Approval.*

The Applicant was not present.

Darrell Mullins noted that, when Applicants do not attend the meetings, the Board has customarily Denied or Tabled the applications, but in this case, for the School District, he would be in favor of approving the application. Erik Enyart stated that, perhaps, he should have given the School District a special invitation.

One of the Board members asked Erik Enyart if the property would be used for a school facility. Mr. Enyart stated that, in his conversations with Marty Foutch of BPS, he had the impression it would be used temporarily for the Bixby Community Outreach Center, and then ultimately for a school facility.

Darrell Mullins asked what the Bixby Community Outreach Center would do with the property. Erik Enyart responded that it was his impression it would be used for doing the same things the Outreach Center does now, giving food and clothing to the needy, in an expanded facility. Mr. Enyart stated that the Outreach Center currently occupied a smaller facility in downtown Bixby.

Dave Hill asked how long the Outreach Center would occupy the property. Erik Enyart stated that he did not know, but that, through his communication with Marty Foutch, he knew only that it would be temporary. Mr. Enyart stated that BPS may not even know how long they intend to allow the Outreach Center to occupy the property.

Chair Jeff Wilson made a MOTION to APPROVE BBOA-573. Darrell Mullins SECONDED the Motion. Roll was called:

ROLL CALL:

AYE:	King, Wilson, Mullins, & Hill
NAY:	None.
ABSTAIN:	None.
MOTION CARRIED:	4:0:0

A few people got up to leave. Chair Jeff Wilson noted that there was no one signed up to speak on the previous item, and asked if they would like to speak anyway.

A woman who did not give her name asked about the circle [on the case map attached to the Public Notice she received], which included her property, and if that meant someone was going to take her property. Erik Enyart stated that that circle represented a 300' radius from the School's 4-acre property, which was used to determine which property owners were mailed the Public Notice, and that no one was proposing to buy her property.

Mary Mashburn of 2 S. Riverview Rd. stated that some of the neighbors were concerned their property would be taken. Erik Enyart stated that Riverview Rd. was already widened, and all of the properties needed for that had already been purchased. Ms. Mashburn expressed concern for the School District and its expansions. Murray King advised Ms. Mashburn that she would have to ask the School District about that. Darrell Mullins asked if the School District was capable of using Eminent Domain to acquire property. Patrick Boulden and Mr. Enyart confirmed, as the School District was an instrumentality of the state. Ms. Mashburn expressed concern that the School District had expanded on both sides of Riverview Rd., and asked if there was any plan for future expansions. Mr. Enyart stated that if there was a plan for expansion, she would need to ask the School District to see that, as the School was not a part of the City [government] and the City had no part in their campus planning.

4. **BBOA-574 – John Filbeck for Riverview Missionary Baptist Church, Inc.**

Discussion and possible action to approve a Variance from certain signage restrictions for a Use Unit 5 church in the RS-1 Residential Single-Family District.

Property located: All of the Reserve in *Gardenview Addition* a/k/a The W. 305' of the S/2 NW/4 NW/4 Less and Except right-of-way, and also part of the N. 65' of the NW/4 SW/4 NW/4, all in Section 12, T17N, R13E; 13201 S. Memorial Dr.

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Chair Jeff Wilson introduced the item and called on Erik Enyart for the Staff Report and recommendation. Mr. Enyart summarized the Staff Report as follows:

**To:** *Bixby Board of Adjustment*  
**From:** *Erik Enyart, AICP, City Planner*  
**Date:** *Friday, March 22, 2013*  
**RE:** *Report and Recommendations for:  
BBOA-574 – John Filbeck for Riverview Missionary Baptist Church, Inc.*

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LOCATION: – *All of the Reserve in Gardenview Addition a/k/a The W. 305' of the S/2 NW/4 NW/4 Less and Except right-of-way, and also part of the N. 65' of the NW/4 SW/4 NW/4, all in Section 12, T17N, R13E*  
– *13201 S. Memorial Dr.*

LOT SIZE: *4 acres, more or less*

ZONING: *RS-1 Residential Single-Family District & CG General Commercial District*

REQUEST: *Variance from certain signage restrictions for a Use Unit 5 church in the RS-1 Residential Single-Family District*

**SURROUNDING ZONING AND LAND USE:**

North: *CG; The building complex containing the Green Acres Sod Farm, Inc. Corporate Office and the Ron's Hamburgers & Chili restaurant, the South Plaza Center shopping center, and the Kum & Go gas station and the KC Auto Repair automobile repair business.*

South: *CG & RM-3; The Bixby Funeral Service, the RiverCrest Event Center, and a vacant 1-acre tract all zoned CG and RM-3, and a 4-acre unplatted tract zoned RM-3.*

East: RS-1 & RM-3; Single-family residential in Gardenview Addition zoned RS-1, and the Autumn Park assisted living facility to the southeast zoned RM-3.

West: (Across Memorial Dr.) CG & RS-1; Commercial businesses along Memorial Dr.

COMPREHENSIVE PLAN: Medium Intensity + Commercial Area

PREVIOUS/RELATED CASES: (not a complete list)

BZ-35 – L.C. Neel – Request for rezoning from AG to CG for 10 acres (NW/4 SW/4 NW/4), including part of subject property – PC Recommended Approval 03/17/1975 and Town Board of Trustees Approved 05/06/1975 (Ord. # 292).

BBOA-452 – Jim Capps for Riverview Missionary Baptist Church, Inc. – Request for Variance to allow a manufactured or modular building to be used as a classroom for Riverview Missionary Baptist Church for subject property – Withdrawn in April, 2007.

RELEVANT AREA CASE HISTORY: (not a complete list)

BZ-29 – Charles E. Norman for Frates Property, Inc. – Request for CS, OM, RD, RS-3, & RM-2 zoning for approximately 231 acres to the east/southeast of subject property – PC Recommended Approval as requested 10/17/1974 and Town Board of Trustees Approved as requested 11/05/1974 (Ord. # 286).

BZ-34 – L.C. Neel – Request for rezoning from RS-1 to CG for 3.5 acres to the north of subject property (now the South Plaza Center shopping center and the building complex containing the Green Acres Sod Farm, Inc. Corporate Office and the Ron's Hamburgers & Chili restaurant) – PC Recommended Approval 03/17/1975 and Town Board of Trustees Approved 05/06/1975 (Ord. # 292).

BZ-53 – L.C. Neel – Request for rezoning from RD to CS for approximately 5 acres abutting subject property to the east (now the Autumn Park assisted living facility and a related independent living housing section) – PC Recommended Approval 02/14/1977 and Town Board of Trustees Approved 02/15/1977 (Ord. # 327).

BZ-56 – Adrian Watkins for Watkins Brothers – Request for rezoning from AG to CG for approximately 6.25 acres to the west of subject property (now part of Riverview Plaza and part of Riverbend Commercial Center) – PC Recommended Approval 08/29/1977 and Town Board of Trustees Approved 09/19/1977 (Ord. # 336).

BZ-62 – Vernon L. Morgan – Request for rezoning from RS-1 to CG for approximately 1 acre to the north of subject property (now the Kum & Go gas station and the KC Auto Repair automobile repair business) – PC Recommended Approval 01/30/1978 and Town Board of Trustees Approved 08/07/1978 (Ord. # 361).

BZ-83 – Delcia G. Wilson – Request for CG, RMH, & RM-2 zoning for approximately 70 acres to the west of subject property – PC Recommended Approval and City Council Approved 04/07/1980 (Ord. # 390 Amended by Ord. # 536 01/14/1986).

BBOA-96 – Frank Clifton – Request for Special Exception to allow a horticultural nursery in a CS, RD, & OM district on approximately 15 acres to the south of subject property (includes, more or less, all of Bixby Crossing) – BOA Approved 01/11/1982.

BZ-113 – R. C. Volentine – Request for rezoning from CS, RM-2, RD, & OM to IL for approximately 30 acres (includes, more or less, all of Bixby Crossing and all of Knight Industrial Park) to the south of subject property – PC Recommended Approval of the S. 15 acres (more or less, Knight Industrial Park) 01/25/1982 and City Council Approved the S. 15 acres 02/22/1982 (Ord. # 454).

BZ-123 – L.C. Neel – Request for rezoning from CS and CG to RM-3 for the east approximately 9.5 acres of a reportedly 11.5883-acre original tract abutting subject property to the south and east for apartments – PC Recommended Approval 09/27/1982 and City Council Approved 11/01/1982 (Ord. # 467).

BZ-129 – Watkins Sand Co., Inc. – Request for rezoning from RS-1 to CG for approximately 1.25 acres to the northwest of subject property (now part of Riverview Plaza) – PC Recommended Approval 01/31/1982 and City Council Approved 02/07/1983 (Ord. # 472).

BBOA-142 – Ray A. Bliss for Watkins Sand Co., Inc. – Request for Special Exception to allow a horticultural nursery in a CG district on approximately 1.25 acres to the northwest of subject property (now part of Riverview Plaza) – BOA Conditionally Approved 02/18/1985 per case notes.

BZ-176 – L.C. Neel – Request for rezoning from RM-3 to CG for a strip of land containing approximately 0.4 acres to the south of subject property – PC Recommended Approval 08/25/1986 and City Council Approved 09/23/1986 (Ord. # 543).

BBOA-209 – Wilson Memorial Properties – Request for Variance from the 26' maximum building height to 30' to permit construction of the Daily Family YMCA of Bixby on property to the west of subject property (platted/replatted as Bixby YMCA) – BOA Approved 01/03/1989 per case notes.

BBOA-222 – Dale Isgrigg for Bixby YMCA – Request for Variance of the 170 parking spaces to 87 for the Daily Family YMCA of Bixby on property to the west of subject property in the Bixby YMCA subdivision – BOA Approved 12/04/1989 per case notes.

BBOA-247 – Helen L. Bartlett – Request for Special Exception to allow a “community service cultural & recreational facilities (softball fields)” in a RD & RM-2 district on approximately 15 acres to the south of subject property (includes, more or less, all of Bixby Crossing) – BOA Approved 02/04/1992 per case notes.

BBOA-253 – Jack Selby – Request for Variance of the 600 square foot maximum floor area for detached accessory building in the RS-1 district to permit the existing 720 square foot accessory building for property located to the east/north of subject property at 8300 E. 133<sup>rd</sup> St. S., Lot 1, Block 3, Gardenview Addition – BOA Approved 07/06/1992 per case notes.

BBOA-254/BBOA-254a – Tim Terral of Pittman, Poe and Associates, Inc. for Lorice T. Wallace – Request for Special Exception to allow a Use Unit 5 golf course in an AG district on 145.1 acres to the southwest of subject property (see PUD 13/13A) – BOA Approved Revised Application 01/04/1993 per case notes.

PUD 13/13A / BZ-201/201A – “River Oaks” – Pittman, Poe and Associates, Inc. – City of Bixby applications (part of the overall 278-acre, dual-jurisdiction PUD for “River Oaks,” a golf and residential development, with the Bixby portion containing approximately 215 acres) requesting RS-1 and AG zoning and then RS-1 and CS zoning and PUD approval for approximately 215 acres to the southwest of subject property – Approved for RS-1 and AG zoning in January, 1993 (Ord. # 681 and # 682) and then re-approved for RS-1 and CS zoning, removing the part that became the Fry Creek Channel and zoning the same AG, in June, 1994 (Ord. # 703 and # 704).

BBOA-298 – Carl C. Jensen – Request for Special Exception to allow a Use Unit 17 used auto sales in a CS district on approximately 15 acres to the south of subject property (includes, more or less, all of Bixby Crossing) – BOA Approved 05/01/1995, but owner found another site and BOA removed the S.E. 07/03/1995.

BBOA-327 – Ted Hill / Jay Ward – Request for Variance from the 100' lot width requirement in the CG district for Lot 1, Block 2, Riverbend Commercial Center (13402 and 13404 S. Memorial Dr.) to the west of subject property to allow for Lot-Split – BOA Approved 04/07/1997 per case notes.

BBOA-401 – Riverview Missionary Baptist Church – Request for Special Exception to allow a Use Unit 5 church use in the RM-3 district for approximately 5 acres abutting subject property to the south – BOA Approved 04/07/2003.

BBOA-408 – Abbas Momeni – Request for Variance from a ground sign setback requirement for the Car Country used automobile sales lot at 13288 S. Memorial Dr. to the west of subject property – BOA Approved 09/02/2003.

BBOA-424 – Gary Fleener for Yale 31 Corporation – Request for Special Exception for a Use Unit 5 preschool/daycare center in an RS-1 district for property located to the northwest of subject property at 13164 S. Memorial Dr. – BOA Approved 07/13/2004.

PUD 49 – “Bixby Crossing” – Sack & Associates, Inc. – Request for PUD supplemental zoning approval on approximately 15 acres to the south of subject property (includes, more or less, all of Bixby Crossing, then the Clifton Industrial Park) – PC Recommended Approval 03/20/2006 and City Council Approved 04/10/2006 (Ord. # 938).

BBOA-446 – Sack & Associates, Inc. – Request for Variance to Section 11-9-17D, parking requirements for ministorage area on approximately 15 acres to the south of subject property (includes, more or less, all of Bixby Crossing) – Approved by BOA 09/05/2006.

#### BACKGROUND INFORMATION:

##### ANALYSIS:

Property Conditions. The subject property contains approximately 4 acres and is zoned RS-1 Residential Single-Family District, with the south approximately 65' or 66' zoned CG General Commercial District. It is used as the Riverview Missionary Baptist Church. Until some time in the past few months, the Tulsa County Assessor's parcel records reflected that it was composed of three (3) parcels, but now the records reflect a singular parcel. It is composed of all of the Reserve in Gardenview Addition a/k/a The W. 305' of the S/2 NW/4 NW/4 Less and Except right-of-way, and also part of the N. 65' of the NW/4 SW/4 NW/4,

all in Section 12, T17N, R13E. The church also owns the approximately 4-acre tract abutting to the south zoned RM-3, and the first four (4) houses on the south side of 133<sup>rd</sup> St. S. to the east of the church itself.

Staff found no zoning approval records. However, the plat of Gardenview Addition, recorded 09/19/1955, reflects the existence at that time of a small "CONC. BLOCK CHURCH," two (2) other small, 1-story frame buildings, and a 1-story frame residence. Further, the Tulsa County Assessor's parcel data reflects that the church was constructed in 1972. Since there was a church on the property in 1955 and the County records reflect the church was built in 1972, this suggests that the 1972 date reflects (a) certain expansion(s) to the existing church campus. Bixby's basic Zoning Ordinance was adopted in 1974, and so it would appear that the church and its expansion(s) may predate the requirement of the Zoning Code for a Special Exception when permitted in an RS residential district.

The church has three (3) driveway connections to Memorial Dr. On the north side of the middle one is the church's one (1) ground sign, at approximately 20' in height. This pole-mounted ground sign has identification (ID) signage at the top and a static/conventional changeable letter/message board underneath. This application pertains to the replacement of the signage on this ground sign structure.

Tests and Standard for Granting Variance. Oklahoma State Statutes Title 11 Section 44.107 and Bixby Zoning Code Section 11-4-8.A and .C together provide the following generalized tests and standards for the granting of Variance:

- Unnecessary Hardship.
- Peculiarity, Extraordinary, or Exceptional Conditions or Circumstances.
- Finding of No Substantial Detriment or Impairment.
- Variance would be Minimum Necessary.

Nature of Variance. The church would like to replace the signage on the existing pole with a new ID sign, 2' X 12', to read "Riverview Baptist Church," and the static/conventional changeable letter/message board with a 5' 11" X 12' LED / Electronic Message Center (EMC).

Zoning Code Section 11-7B-3.B.4.a and .b provide:

#### "4. Signs:

a. One bulletin board may be erected on each street frontage of any educational, religious, institutional or similar use requiring announcement of its activities. The bulletin board shall not exceed thirty two (32) square feet in surface area, nor twenty feet (20') in height, and illumination, if any, shall be by constant light.

b. One identification sign may be erected on each perimeter street frontage of a multi-family development, mobile home park, single-family subdivision or permitted nonresidential use. The sign shall not exceed two-tenths ( $\frac{2}{10}$ ) of a square foot of display surface area per linear foot of street frontage; provided, however, that in no event shall the sign be restricted to less than thirty two (32) square feet nor permitted to exceed ten (10) square feet of display surface area. The sign shall not exceed twenty feet (20') in height, and illumination, if any, shall be by constant light."

The church, being (a) a religious use and (b) a permitted nonresidential use by virtue of being legally nonconforming ("grandfathered") in an RS residential zoning district, is permitted both the ID sign and the LED/electronic EMC changeable message board sign. The 20' height would comply with the maximum restriction for the same. The ID sign would comply with the maximum display surface area restriction (note the 10 square feet and 32 square feet minimum/maximum are interpreted as inverted, so 32 square feet is the maximum). At 71 square feet, the LED changeable message sign would exceed the maximum display surface area allowable.

By this application, the Applicant is requesting a Variance from this maximum display surface area restriction.

Zoning Code Sections 11-7B-3.B.4.a and .b provide, in part: "and illumination, if any, shall be by constant light." Similar language is found in Zoning Code Sections 11-7A-3.B.2, pertaining to permitted non-residential uses in the AG district.

*This requires an interpretation be rendered as concerns the use of Electronic / LED lighting within the changeable message board element.*

*Recognizing that, in era in which that text was written (1960s and early 1970s usually), LED technology was not used for signage applications, Staff understands the original intent was for the internally-illuminated signs (plastic-faced signs with a light bulb inside) not to have a 'blinking' function, or external lights cast up (or down) on the sign to be constant.*

*The principal signage regulations of the Bixby Zoning Code (11-9-21) used to have language that, although it may not have anticipated LED/Electronic signage technology, appeared to have been written broadly enough to proscribe it. It used to read (11-9-21.C.2):*

*"2. All signs shall be of a constant light. No flashing or intermittent type of lighted signs are allowed."*

*Prior to 2008, Staff considered that LED / Electronic signs were in fact not of constant light, by necessary function of the technology which relies on turning individual or clusters of Light Emitting Diodes on and off in order to change the imagery and message. Staff observed also that such LED signs may be programmed to flash or be turned on/off, in whole or in part, intermittently. Staff did not consider LED signs to comply with the Zoning Code restriction cited immediately above.*

*However, the City Council removed that restriction by ordinance around June 2008. The Council specifically expressed that, if a business owner can afford an LED sign, they should be allowed to have one. This clear legislative intent should carry through to permitted non-residential uses in the AG and RS districts.*

*The "illumination" and "constant light / no flashing or intermittent" provisions are different, apparently intentionally so, and appear to be pointing to two (2) different things. The "illumination" standard remaining in the AG district appears to point to the illumination of the whole sign face, internally or externally by casting light up or down on the sign face.*

*For all the reasons listed above, Staff does not interpret the "and illumination, if any, shall be by constant light." as restricting LED / Electronic message boards in the RS or AG districts, or in other districts in which that "illumination" language remains.*

*However, this interpretation is fairly debatable, and so the "Variance from certain signage restrictions" language of this Variance, if required, may be applied to this Electronic / LED format element of the proposed sign.*

*Both Variance request elements are inextricably related with a common nexus: The proposal to replace the existing changeable message board sign with a new Electronic / LED EMC sign in excess of the maximum display surface area restriction. Further, the different Zoning Code regulations from which the Variance has been requested all operate to a singular effect: the prohibition of same as currently proposed. Therefore, this report will not divide the separate Variance components into different report sections, except where possible and appropriate.*

*Peculiar, Extraordinary, or Exceptional Conditions or Circumstances. The Applicant claims that the subject property and its Condition or Situation is Peculiar, Extraordinary, and/or Exceptional by stating "Building predates current Zoning Code."*

*The provided argument does not appear to correspond to the question asked. Information is not available to document when the existing sign was constructed. However, Staff cannot conceive a rational argument for the new expansion of the existing sign based on the age of the sign itself. The Zoning Code is designed to allow for the abatement of nonconformities by attrition, and does not condone the creation of new nonconformities.*

*Further, as the area case history documents, this section of Memorial Dr. between 131<sup>st</sup> St. S. and Washington Irving Memorial Park & Arboretum has consistently seen commercial development and redevelopment for the past several decades. The subject property is the only RS-1 district fronting on the east side of Memorial Dr. in this area, and its scale (height and mass on the subject property) are more consistent with high intensity and commercial use. The other RS-1 district fronting on the west side of Memorial Dr., located to the northwest of the subject property at 13164 S. Memorial Dr., was approved for a Special Exception to allow a preschool/daycare business in 2004 per BBOA-424. The church on the subject property had, or still has, a children's daycare facility, a commercial use, presumably extending property use throughout six (6) or seven (7) days of the week. Thus, the allowance of a somewhat larger sign that is more consistent with commercial use would seem relatively appropriate for the property.*

At four (4) acres in size, the subject property is fairly large, and is the second-largest developed parcel fronting on Memorial Dr. south of 131<sup>st</sup> St. S. to Washington Irving Memorial Park & Arboretum (the largest being Self Storage Depot). The subject property also has almost 700' of frontage on Memorial Dr., which is the most of any developed parcel within said area.

Recognizing the church has been on the subject property since at least 1955, is only permitted one (1) ground sign that is fairly restricted as to display surface area in relation to the surrounding area, which has overwhelmingly been zoned/rezoned and developed/redeveloped in a commercial nature since, that the property could qualify for commercial zoning, and then be allowed more signage than is presently proposed, and for the other reasons set forth herein, Staff believes that the Application substantially meets the Peculiar, Extraordinary, or Exceptional Conditions or Circumstances test and standard.

Unnecessary Hardship. The Applicant claims that an unnecessary hardship would be caused by the literal enforcement of the Zoning Code because "Zoning restrictions cause proposed signage [to be] unallowed."

As it would appear to relate to this test and standard, the supplemental narrative provides, "As many know, the church relies on [its] population to succeed, and allowing this exception can assist the church by using signage to gain more members, use an affordable form of advertising for upcoming events, promote community awareness, and contribute to the beautification of Memorial Drive."

As claimed by the Applicant, the restriction from exceeding the maximum display surface area could be considered an Unnecessary Hardship.

Finding of No Substantial Detriment or Impairment. The Applicant claims that the requested Variance would Not Cause Substantial Detriment to the Public Good or Impair the Purposes, Spirit and Intent of the Zoning Code or the Comprehensive Plan because "The signage will not be visible in the Residential area and will contribute to the attractiveness to Memorial Drive."

Based on aerial GIS data, it appears that the sign, perpendicular to Memorial Dr., would have sight lines extending to some of the houses in Gardenview Addition and Henry Fergeson Addition to the northeast.

Signage spacing, height, and display surface area restrictions are generally imposed to help maintain the aesthetic quality of the City's commercial corridors, and also operates to ensure all businesses enjoy appropriate visibility, uncluttered by excessive signage from neighboring properties. It is counterintuitive to argue that a larger sign here will "contribute to the attractiveness to Memorial Drive."

As it would appear to relate to this test and standard, the supplemental narrative provides, "The proposed signage is the exact size of three signs currently located on Memorial Drive within two miles of the church building. As many know, the church relies on [its] population to succeed, and allowing this exception can assist the church by using signage to gain more members, use an affordable form of advertising for upcoming events, promote community awareness, and contribute to the beautification of Memorial Drive."

The narrative does not specify what signs are referenced, but the provided attachments include narrated photos of the Boardwalk on Memorial shopping center's new sign at 12345 S. Memorial Dr. and the BTC Broadband sign at 11134 S. Memorial Dr., both of which are zoned CS Commercial.

The Comprehensive Plan designates the subject property as Medium Intensity + Commercial Area. Surrounding zoning patterns are primarily CG and CS to the north, northwest, west, southwest, and south, along both sides of Memorial Dr. It is reasonable to surmise that an application to rezone the property to Commercial would be successful, provided a PUD was also imposed to help mitigate future redevelopment's effects on the residential properties to the east. If zoned Commercial, the display surface area restrictions in place here would not be an issue, and multiple ground signs would be permitted, larger, and with more display surface area.

See also the argument under the Peculiar, Extraordinary, or Exceptional Conditions or Circumstances section describing the church's situation in an RS-1 district surrounded by commercial zoning and land use, and the size and frontage of the subject property lot.

Therefore, Staff believes that that approval of the requested Variance would Not Cause Substantial Detriment to the Public Good or Impair the Purposes, Spirit and Intent of the Zoning Code or the Comprehensive Plan.

Finding of Minimum Necessary. The Applicant claims that the requested Variance would be the Minimum Necessary to Alleviate the Unnecessary Hardship because “Adequate signage will attract more church members and raise community awareness.”

The provided argument does not appear to correspond to the question asked.

As it would appear to relate to this test and standard, the supplemental narrative provides, “The proposed signage is the exact size of three signs currently located on Memorial Drive within two miles of the church building.”

Recognizing the Applicant proposes a 71 square foot Electronic / LED EMC, precisely 39 square feet more than the 32 square feet allowed, a Variance of 39 square feet would appear to be the Minimum Necessary to Alleviate the Unnecessary Hardship, should hardship be determined.

Staff Recommendation. Staff believes that the arguments provided by the Applicant and Staff appear to substantially meet the tests and standards of the Zoning Code and State Statutes, and recommends Approval.

Chair Jeff Wilson asked if the Applicant was present and wished to speak on the item. Jill Blankenship [of Crown Neon Signs] stated that she represented the company assisting the church with the sign. Ms. Blankenship stated that [the pastor] wanted to not have to manually change the letters, and that the message center would be used to promote church “get togethers” and other church functions.

Murray King asked if the sign would be like the *Sutherland’s* sign, and Jill Blankenship responded affirmatively.

A Board member asked how much larger the new sign would be. Jill Blankenship stated that the existing message center was 4’ X 8’ and would be expanded from 32 square feet to 71 square feet [of display surface area]. Ms. Blankenship stated that the main ID sign would be minimized, and that the combined total [display surface area] would be 95 square feet, which was two (2) square feet smaller than the existing sign.

Jack Selby [of the Bixby Funeral Service] asked Jill Blankenship to confirm the new sign would “not hide my sign,” and Ms. Blankenship stated that it would not. Mr. Selby asked who would enforce the if the sign was not installed according to what was permitted. Erik Enyart responded that the Building Inspector was responsible for inspecting and confirming that what they build is consistent with what the City permitted.

Dave Hill noted that the property used to have a “beer joint” on it. Erik Enyart stated that, per the plat of [*Gardenview Addition*], there was a small, concrete block church toward the center of the church’s current property, and he assumed it had always been a church from at least that time, the 1950s, to the present. Mr. Enyart stated that the plat also showed a parcel at the northwest corner of the current acreage that had a house on it. Jack Selby stated that the beer joint was on the property in the 1940s.

Jack Selby asked Dave Hill if he was a member [of the Riverview Missionary Baptist Church], and Mr. Hill responded that he used to be a long-time member but now attended another local church.

Patrick Boulden asked Erik Enyart if he had not said that [the sign would be permitted] if this was a business, and Mr. Enyart responded affirmatively, and stated, “If it were zoned Commercial, [the church] would be permitted more signage than they are proposing now.” Mr. Boulden



cautioned the Board from discriminating against the signage because the property was a church. Mr. Boulden recommended Approval.

Chair Jeff Wilson asked to entertain a Motion. Murray King made a MOTION to APPROVE BBOA-574. Dave Hill SECONDED the Motion. Roll was called:

**ROLL CALL:**

AYE: King, Wilson, Mullins, & Hill  
NAY: None.  
ABSTAIN: None.  
MOTION CARRIED: 4:0:0

5. **BBOA-575 – Blake Fugett.** Discussion and possible action to approve a Variance from the accessory building maximum floor area per Zoning Code Section 11-8-8.B.5 to allow a new 40.25' X 60.25' (2,425) square foot accessory building in the rear yard for property in the RE Residential Estate District.

Property located: Part of the E/2 SW/4 of Section 22, T17N, R13E; 5257 E. 161<sup>st</sup> St. S.

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Chair Jeff Wilson introduced the item and called on Erik Enyart for the Staff Report and recommendation. Mr. Enyart summarized the Staff Report as follows:

**To:** Bixby Board of Adjustment  
**From:** Erik Enyart, AICP, City Planner  
**Date:** Wednesday, March 27, 2013  
**RE:** Report and Recommendations for:  
BBOA-575 – Blake Fugett

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**LOCATION:** – Part of the E/2 SW/4 of Section 22, T17N, R13E  
– 5257 E. 161<sup>st</sup> St. S.

**LOT SIZE:** 1.2 acres, more or less

**ZONING:** RE Residential Estate District

**REQUEST:** Variance from the accessory building maximum floor area per Zoning Code Section 11-8-8.B.5 to allow a new 40.25' X 60.25' (2,425) square foot accessory building in the rear yard for property in the RE Residential Estate District

**SURROUNDING ZONING AND LAND USE:** RE & AG; Vacant and agricultural with rural residential to the northwest along 161<sup>st</sup> St. S. and Braden Ave. zoned AG in unincorporated Tulsa County

**COMPREHENSIVE PLAN:** Low Intensity + Residential Area

**PREVIOUS/RELATED CASES:** (not a complete list)

BZ-120 – Calvin Tinney – Request for rezoning from AG to RS-3 for the E/2 of the SW/4 of this Section (80 acres) (including subject property) – PC Recommended Approval 08/30/1982 and City Council Approved 09/07/1982 (Ord. # 460).

BZ-126 – Georgina B. Landman, attorney (not representing property owner) – Request for rezoning from RS-3 to RS-1 for the E/2 of the SW/4 of this Section (80 acres) (including subject property) – PC Recommended Approval 12/27/1982 and City Council Denied 01/03/1983 per case notes.

BZ-181 – W.S. Atherton – Request for rezoning from AG & RS-3 to CG, RM-3, and RE for approximately 240 acres (including subject property) for a future (but never built) "Atherton Farms Equestrian Estates" residential subdivision – City Council Approved 06/23/1987 (Ord. # 562).

BBOA-190 – W.S. Atherton – Request for "Use Variance" to allow the keeping of horses on individual lots as an accessory use for approximately 240 acres (including subject property) for a future (but never built) "Atherton Farms Equestrian Estates" residential subdivision – BOA Approved 07/13/1987.

PUD 20 – Atherton Farms Equestrian Estates – Phillip Faubert – Request for rezoning from AG & RS-3 to CG, RM-3, and RE for approximately 240 acres (including subject property) for a future (but never built) “Atherton Farms Equestrian Estates” residential subdivision – Recommended for Approval by PC 01/20/1998. However, this case was evidently never presented to the City Council, as it did not appear on any agenda from January 26, 1998 to April 27, 1998, no Ordinance was found relating to it, and there are no notes in the case file suggesting it ever went to City Council. Further, PUD 20 does not exist on the official Zoning Map. An undated application signed by Phillip Faubert from circa March, 2001 was found in the case file requesting to “rescind PUD 20,” but no records or notes were found to determine the eventual disposition of this request, if any.

BL-228 – Phillip Faubert – Request for Lot-Split to separate a 2.7-acre tract from 240 acres from balance of approximately 240 acres (including subject property) – PC Approved 03/16/1998 and City Council Approved 03/23/1998.

BL-279 – Wayne L. Haynes for the William and Ann Atherton Trust – Request for Lot-Split approval to separate subject property from the E/2 of the SW/4 of this Section (80 acres) – Application dated 07/01/2003 but no record of disposition or consideration by Staff or Planning Commission found – see BL-284.

BL-284 – Wayne L. Haynes – Request for Lot-Split approval to separate subject property from the E/2 of the SW/4 of this Section (80 acres) (same as BL-279) – Prior Approval date stamps on deeds dated 11/24/2003 but no record of disposition or consideration by Planning Commission found in calendar year 2003 or the first 2 months of calendar year 2004.

RELEVANT AREA CASE HISTORY: (not necessarily a complete list and does not include cases in unincorporated Tulsa County)

BZ-238 – W.S. Atherton – Request for rezoning from AG to RE for approximately 10 acres to the northeast of subject property for part of a future (but never built) “Atherton Farms Equestrian Estates” residential subdivision – City Council Approved 02/23/1998 (Ord. # 768).

BBOA-485 – Phillip Faubert – Request for Special Exception per Zoning Code Section 11-7D-2 Table 1 to allow a Use Unit 6 single-family dwelling and customary accessory structures in the CG district for a 2.7-acre tract to the northeast of subject property – BOA Approved 08/04/2008.

BBOA-486 – Phillip Faubert – Request for Variance from certain bulk and area requirements of Zoning Code Section 11-7D-4 Table 2, including, but not necessarily limited to: The setback from an abutting R district and the 100-foot minimum street frontage requirement, to allow a Use Unit 6 single-family dwelling and customary accessory structures in the CG district for a 2.7-acre tract to the northeast of subject property – BOA Approved 08/04/2008.

#### BACKGROUND INFORMATION:

##### ANALYSIS:

Subject Property Conditions. The subject property is an unplatted tract of approximately 1.2 acres, addressed 5257 E. 161<sup>st</sup> St. S., and Zoned RE. The parcel contains an existing house located just north of the lot centroid.

Tests and Standard for Granting Variance. Oklahoma State Statutes Title 11 Section 44.107 and Bixby Zoning Code Section 11-4-8.A and .C together provide the following generalized tests and standards for the granting of Variance:

- Unnecessary Hardship.
- Peculiarity, Extraordinary, or Exceptional Conditions or Circumstances.
- Finding of No Substantial Detriment or Impairment.
- Variance would be Minimum Necessary.

Nature of Variance. The Applicant is requesting a Variance from the accessory building maximum floor area per Zoning Code Section 11-8-8.B.5 to allow a new 40.25' X 60.25' (2,425 square foot) accessory storage building for property in the RE Residential Estate District.

Zoning Code Section 11-8-8.B.5 provides:

“5. In the RE and RS districts, detached accessory buildings may be located in a rear yard, provided the accessory building(s) in the aggregate do not cover more than twenty percent (20%) of the area of the rear yard or exceed eight hundred (800) square feet of floor area, whichever is less.

No accessory building shall exceed the height of the primary dwelling on the lot.

In the RE and RS districts, lots containing at least one acre of lot area shall be permitted to exceed the eight hundred (800) square foot floor area limitation by 11.6 percent. Further, lots containing 1.25 acres or more of lot area shall be permitted to exceed eight hundred (800) square feet by an additional 11.6 percent for each one-fourth ( $\frac{1}{4}$ ) of an acre over one acre, provided that in no case shall accessory building(s) in the aggregate exceed the square footage of the first floor of the primary dwelling or two thousand four hundred (2,400) square feet, whichever is less, or cover more than twenty percent (20%) of the area of the rear yard. (Ord. 2031, 12-21-2009)"

As the subject property is in the RE residential zoning district and contains approximately 1.2 acres, the maximum allowable detached accessory building size is 892.8 square feet.

The "sliding scale" was introduced as a measure of flexibility, along with an increase in the basic maximum square footage from 750 square feet to 800 square feet, by Ordinance # 2031, approved December 21, 2009. It was designed to allow people to have larger accessory buildings, if they had enough land so that the accessory building did not dominate the parcel aesthetically and so detract from the neighborhood. The "sliding scale" was calculated in order to start at 800 square feet and increase regularly for each  $\frac{1}{4}$  acre increment to the maximum of 2,400 square feet, which requires a lot containing slightly more than 3.25 acres.

This is the sixth application for Variance which has been received since the added flexibility was created, and it is requesting a Variance to exceed even the new flexibility. The first was BBOA-550 – Mitch & Gail Pilgrim, which the Board approved 12/05/2011 for that property located in Bixhoma Lake Estates. The second was BBOA-558 – John Ryel, which the Board approved 05/07/2012 for that property located in the Houser Addition. On August 06, 2012, the Board of Adjustment denied an application to build a 5,000 square foot addition to an existing 900 square foot accessory building for an unplatted 1-acre tract at 14426 S. Harvard Ave. (BBOA-565 – Robert Campbell III & Karen M. Campbell). On October 01, 2012, the Board approved BBOA-568 – Roger O. Nunley, Jr., allowing allow a new 960 square foot addition to an existing 2,000 square foot accessory structure for property in the RS-1 District at 8703 E. 124<sup>th</sup> St. S. in Southern Memorial Acres No. 2. BBOA-572 – Spencer Thompson is pending consideration on this agenda.

Unnecessary Hardship. The Applicant claims that an Unnecessary Hardship would be caused by the literal enforcement of the Zoning Code because "It will create this due to weathering on my assets by forcing them outside such as boats, tractor & ATV since current codes do not permit room for such things." Elsewhere on the application form, the Applicant has further explained the need thus, "The use of the barn/shop will be for storage of two boats, one bobcat & a four wheeler. The building would match house & wouldn't be an eyesore."

The argument appears to be that the failure to be granted Variance would deprive the owner of the right to exceed the aggregate maximum floor area for an accessory building, and as a result, lack of proper shelter for (some amount of) relatively expensive personal property. Staff does not dispute that this claim is true, and may amount to an Unnecessary Hardship.

Peculiar, Extraordinary, or Exceptional Conditions or Circumstances. The Applicant responded to the question asking how the subject property and its Condition or Situation is Peculiar, Extraordinary, and/or Exceptional by stating, "My property is in the country it butts up to a large undeveloped trac[t] of land. The nearest home is approximately 160 yds away."

The provided argument is self-explanatory.

Finding of No Substantial Detriment or Impairment. The Applicant claims that the requested Variance would Not Cause Substantial Detriment to the Public Good or Impair the Purposes, Spirit and Intent of the Zoning Code or the Comprehensive Plan because "If granted the shop/barn will match home, it will also place current items inside away from public sight."

The provided argument is self-explanatory.

Of the several fundamental purposes for imposing maximum accessory building size and rear yard placement restrictions, Staff believes the primary reason is for the sake of consistency of design, proportionality, and mode of placement of structures (aesthetics).

The building is proposed to be constructed in the northwest corner of the lot. Compliance with the 40' rear yard setback requirement in the AG district has not been demonstrated on the provided

information. The lot is highly visible from 161<sup>st</sup> St. S., due to the flat grade and lack of vegetation or development on surrounding parcels.

The unplatted subdivision, which may now or once have gone by the name "Tracts of [R]ayford Luker" or "Tracts of Raiford Luker," abuts to the west in the W/2 SW/4 of this Section in unincorporated Tulsa County. The rural residential tracts contained therein commonly contain approximately 2.5 acres apiece. Considering the size of the tracts and the rural setting, the houses do not appear to have a large number of accessory buildings, nor do the ones appearing in 2012 aerial imagery appear to be particularly large in size (1 ~30' X 40', 1 ~40' X 60' observed and estimated).

Approximately 239 acres abutting to the north and east are owned by W. S. & Delores Ann Atherton. Once planned for an equestrian-related residential subdivision, owners' representative has claimed that the land is not now, nor will it soon be scheduled for such development. When and if the land is developed, presumably at RE-densities/intensities, it is not known if accessory buildings will be proscribed or permitted, nor is it known how that area will relate to the subject property.

Finding of Minimum Necessary. The Applicant claims that the requested Variance would be the Minimum Necessary to Alleviate the Unnecessary Hardship because "It would be the min. amount of storage needed to house all personal assets without causing depreciation due to weather, vand[a]lism & theft."

The provided argument is self-explanatory.

Recognizing the intent behind the "sliding scale" flexibility provision, Staff believes it should be somewhat more difficult to justify this test and standard. If the Board is amenable to this application, it must find that the proposed aggregate 2,425 square feet of accessory buildings, 2.7 times the 800 square foot maximum, is the Minimum Necessary to Alleviate the Unnecessary Hardship.

Staff Recommendation. Except as noted otherwise hereinabove, Staff believes that the arguments provided by the Applicant and Staff appear to substantially meet some of the tests and standards of the Zoning Code and State Statutes. To the extent the arguments are found lacking, the Board may wish to consider other arguments that the Applicant and Board may discover during public hearing and consideration of this case at the meeting.

Chair Jeff Wilson asked if the Applicant was present and wished to speak on the item. Applicant Blake Fugett of 5257 E. 161<sup>st</sup> St. S. stated that he was building a shop to store two (2) boats and a bobcat [machine], which he presently stored near Jenks at Jones Airport. Mr. Fugett stated that the barn would match his house, and would be a pre-engineered steel building, 16' tall at its peak, and would be located in the corner of the lot.

Patrick Boulden asked what was the nature of the building. Murray King asked Blake Fugett what his business was, and Mr. Fugett responded he had a landscaping business, but he stored his equipment at 175<sup>th</sup> St. S. and Harvard Ave. at his parents' house on 60 acres. Mr. Fugett stated that the only piece of equipment [related to the business] he would store here was the bobcat, which was a \$40,000 machine and which he wanted to keep close by and out of the rain.

Jack Selby asked Blake Fugett to confirm there would be no manufacturing in the building, and Mr. Fugett responded there would not.

Erik Enyart noted that the property was somewhat unique, in that it was [the edge of] the City Limits, and if one went west, all of that area was in the [unincorporated part of Tulsa] County.

Chair Jeff Wilson asked to entertain a Motion. Dave Hill made a MOTION to APPROVE BBOA-575. Chair Jeff Wilson SECONDED the Motion. Roll was called:

ROLL CALL:

AYE: King, Wilson, Mullins, & Hill  
NAY: None.  
ABSTAIN: None.  
MOTION CARRIED: 4:0:0

6. **BBOA-576 – Jack Selby for the Bixby Rotary Club and Bixby Funeral Service.**

Discussion and possible action on an appeal of a sign building permit denial, and the interpretation on which it was based, pursuant to Zoning Code Sections 11-4-6 and 11-4-7, which permit proposed the construction of signs on property in the CG General Commercial District, and to allow the project development to proceed.

Property located: Part of the SW/4 NW/4 Section 12, T17N, R13E; Northeast corner of the intersection of 134<sup>th</sup> St. S. and Memorial Dr.

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Chair Jeff Wilson introduced the item and called on Erik Enyart for the Staff Report and recommendation. Mr. Enyart began to summarize the Staff Report.

Applicant Jack Selby of 14814 S. 52<sup>nd</sup> E. Ave. stated that attorney Jim Ferris was representing this application. After further discussion, Mr. Ferris stated that his client would like the application Continued for two (2) months.

Patrick Boulden stated that he knew there was a rule in the City of Tulsa where an application had to be decided in 60 days. Erik Enyart stated that he was not aware of any local rule requiring this, and unless State Statutes or the Zoning Code provided otherwise, he had never observed there to be a problem for an application to be Continued for several months at a time. Mr. Enyart stated that he considered it necessary that, if Continued, the Board would have to Continue the Public Hearing and consideration of the item to a “date certain.” Mr. Enyart stated that the Regular Meeting two (2) months from now would be June 03, 2013. Mr. Enyart stated that he had no objections to the Continuance, especially if requested by the Applicant. After further discussion, regarding the Continuance question, Mr. Boulden stated that the Board would be “safe on that one.”

Chair Jeff Wilson made a MOTION to CONTINUE BBOA-576 to the June 03, 2013 Regular Meeting, as requested by the Applicant. Murray King SECONDED the Motion. Roll was called:

ROLL CALL:

AYE: King, Wilson, Mullins, & Hill  
NAY: None.  
ABSTAIN: None.  
MOTION CARRIED: 4:0:0

ADJOURNMENT

Chair Jeff Wilson asked to entertain a Motion to Adjourn. Dave Hill made a MOTION to ADJOURN. Chair Jeff Wilson SECONDED the Motion. Roll was called:

ROLL CALL:

AYE: King, Wilson, Mullins, & Hill

NAY: None.

ABSTAIN: None.

MOTION CARRIED: 4:0:0

The meeting was Adjourned at 6:45 PM.

APPROVED BY:

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Chair

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Date

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City Planner/Recording Secretary